156 FERC ¶ 61,098
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Midcontinent Independent System Operator, Inc. — Docket Nos. ER16-696-000, ER16-696-001

ORDER ON COMPLIANCE

(Issued August 9, 2016)

1. On January 8, 2016, in Docket No. ER16-696-000, Midcontinent Independent System Operator, Inc. (MISO) submitted a compliance filing pursuant to the Commission's order issued in Docket No. EL15-68 *et al*.[1] As directed by the Commission, the compliance filing revises MISO's *pro forma* Generator Interconnection Agreement (GIA), *pro forma* Facilities Construction Agreement (FCA), and *pro forma* Multi-Party Facilities Construction Agreement (MPFCA) so that a transmission owner may provide the initial funding for network upgrades upon the mutual agreement of the interconnection customer.[2] On January 12, 2016, in Docket No. ER16-696-001, MISO submitted an amended filing in order to include the proposed changes to the currently effective version of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).[3] We accept the filings subject to condition, as discussed below.

---

[1] *Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,352 (2015) (December 29 Order).

[2] MISO Initial Funding Compliance Filing, Transmittal Letter at 2 (filed Jan. 8, 2016) (Filing).

[3] MISO Amendment to Initial Funding Compliance Filing, Transmittal Letter at 1 (filed Jan. 16, 2016) (Amended Filing).

I. **Background**

2. MISO's *pro forma* GIA governs the network upgrades constructed for the interconnection customer by the transmission owner with which it directly interconnects. In October 2009, the Commission accepted MISO's proposal for cost responsibility for network upgrades as set forth in revised Attachment FF of its Tariff.[4] As such, under the existing Tariff, an interconnection customer is responsible for 100 percent of the costs of network upgrades rated below 345 kV, but will receive a 10 percent reimbursement for projects that are rated at 345 kV and above.[5] This is referred to herein as MISO's Interconnection Customer Funding Policy. At that time, MISO's Tariff provided three alternatives for funding the costs of network upgrades for generator interconnections. Attachment FF of the Tariff described two of these alternatives (Option 1 and Option 2), which were incorporated into MISO's *pro forma* GIA by reference, while Article 11.3 in MISO's *pro forma* GIA[6] contemplated a third.

3. Under Option 1: (1) the interconnection customer provided up-front funding for network upgrades; (2) the transmission owner provided a 100 percent refund of the cost of network upgrades to the interconnection customer upon completion of the network upgrades; and (3) the transmission owner assessed the interconnection customer a monthly network upgrade charge to recover the cost of the non-reimbursable portion of the network upgrade costs over time based on a formula contained in Attachment GG[7] of

---

[4] Attachment FF (Transmission Planning Expansion Protocol) of the MISO Tariff describes the process to be used by MISO to develop the MISO Transmission Expansion Plan, which facilitates the expansion of and/or modification to MISO's transmission system.

[5] *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060, at P 8 (2009). The Commission allows flexibility as to the specifics of interconnection pricing policies for transmission providers that are independent entities, and MISO's proposal was accepted by the Commission as an independent entity variation from the Commission-approved *pro forma* Large Generator Interconnection Agreement (LGIA). *Id*. P 50.

[6] MISO's *pro forma* GIA is located in Appendix 6 to Attachment X of the MISO Tariff (Generator Interconnection Procedures).

[7] Attachment GG (Network Upgrade Charge) of the MISO Tariff includes in the calculation of the network upgrade charge a return on capital investment, income taxes, depreciation expense, operating and maintenance expense, administrative and general expense, and other direct and indirect costs.

the MISO Tariff. The charge was established through a separate facilities service agreement. The Commission found Option 1 to be unjust and unreasonable and ordered MISO to remove the funding option from the Tariff, effective March 22, 2011.[8]

4. Under Option 2: (1) the interconnection customer provides up-front funding for network upgrades and (2) the transmission owner refunds the reimbursable portion of the payment, as applicable, to the interconnection customer in the form of a credit to reduce the transmission service charges incurred by the transmission customer with no further financial obligations on the interconnection customer for the cost of upgrades.

5. Under a third alternative in Article 11.3 of MISO's *pro forma* GIA, the transmission owner could unilaterally elect to provide the up-front funding for the capital cost of the network upgrades.[9]

6. In addition to MISO's *pro forma* GIA, the Commission has also accepted MISO's *pro forma* FCA and *pro forma* MPFCA.[10] The *pro forma* FCA is an agreement for network upgrades on affected systems, or network upgrades constructed for an

---

[8] *E.ON Climate & Renewables North America, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,076, at P 43 (2011) (*E.On*), *order on reh'g*, 142 FERC ¶ 61,048, at P 39 (2013), *order on reh'g*, 151 FERC ¶ 61,264 (2015).

[9] This option was originally identified in Order No. 2003. *See Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 720 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at PP 618, 658, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008). The option in the *pro forma* LGIA established by Order No. 2003 differs from the option in MISO's Tariff. Specifically, under Article 11.3 of the Order No. 2003 *pro forma* LGIA, a transmission owner electing to initially fund network upgrades would provide the up-front funding for the capital cost of the network upgrades, and then recover the costs of the network upgrades through its transmission rates charged to *all* transmission customers. In contrast, in MISO, a transmission owner electing to initially fund network upgrades would assign the non-reimbursable portion of the costs of the network upgrades directly to the interconnection customer through a network upgrade charge.

[10] *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,301, at P 5 (2009).

interconnection customer by a transmission owner other than the transmission owner with which it directly interconnects. This indirectly-connected transmission owner is known as the affected system operator under the FCA. The *pro forma* MPFCA is used when multiple interconnection requests cause the need for construction of common network upgrades on a directly-connected transmission system or the transmission system of an affected system operator. The *pro forma* FCA and *pro forma* MPFCA are appendices to MISO's generator interconnection procedures and, as with the *pro forma* GIA, these agreements reference MISO's Interconnection Customer Funding Policy and the network upgrade cost recovery provisions in Attachment FF of MISO's Tariff. However, the *pro forma* FCA and the *pro forma* MPFCA did not originally include the initial funding option contained in Article 11.3 of MISO's *pro forma* GIA.

7. On June 18, 2015, in Docket No. EL15-68-000, the Commission instituted a proceeding to examine MISO's *pro forma* FCA, *pro forma* GIA, and *pro forma* MPFCA pursuant to section 206 of the FPA.[11] The Commission found that the customers of an affected system operator under MISO's *pro forma* FCA or *pro forma* MPFCA and the customers of a directly-connected transmission owner under MISO's *pro forma* GIA are similarly situated and should be treated comparably in the transmission system planning context, such that the same funding options should be available for all interconnection customers in MISO regardless of whether their upgrades are governed pursuant to MISO's *pro forma* GIA, *pro forma* FCA, or *pro forma* MPFCA.[12] However, the Commission did not require MISO to apply the language from Article 11.3 of MISO's *pro forma* GIA to its *pro forma* FCA and *pro forma* MPFCA, which would have allowed the affected system operator to unilaterally elect to provide the initial funding for network upgrades.[13] The Commission found that Article 11.3 of MISO's *pro forma* GIA may be unjust, unreasonable, unduly discriminatory or preferential because the transmission owner's unilateral election to provide initial funding for network upgrades may increase costs of interconnection service with no corresponding increase in service and deprive the interconnection customer of other options to finance the cost of the network upgrades that provide more favorable terms and rates.[14] The Commission required MISO to make a filing either to report whether it would (1) propose Tariff changes providing that the transmission owner or affected system operator may only elect to provide the initial

[11] *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,220 (2015) (June 18 Order).

[12] *Id.* P 47.

[13] *Id.* P 48.

[14] *Id.* P 49 (citing *E.ON*, 137 FERC ¶ 61,076 at P 37).

funding for network upgrades if the interconnection customer agrees to such election, or (2) explain why such changes are not necessary to address the potential that MISO transmission owners may exercise their discretion to increase the network upgrade costs that are directly assigned to interconnection customers under MISO's Interconnection Customer Funding Policy.[15]

8. On August 17, 2015, MISO made an informational filing regarding the initial funding option.[16] On September 15, 2015, the Commission issued a notice of the MISO Report and stated that the Commission was providing an opportunity for other parties to comment on the Commission's preliminary findings in the section 206 proceeding in Docket No. EL15-68-000, as well as the MISO Report. In the December 29 Order, the Commission denied a request for rehearing of the June 18 Order and addressed comments on the Commission's preliminary findings in the section 206 proceeding.[17] The Commission directed MISO to make a compliance filing revising its *pro forma* GIA, *pro forma* FCA, and *pro forma* MPFCA to provide that the transmission owner or affected operator may elect to initially fund network upgrades only upon the mutual agreement of the interconnection customer, with such Tariff changes to be effective on June 24, 2015.[18]

II. Filings

9. MISO states that it has complied with the Commission's directive in the December 29 Order by revising Article 11.3 of its *pro forma* GIA as follows:

> Transmission Owner shall provide Transmission Provider and Interconnection Customer with written notice pursuant to Article 15 *that*~~if~~ Transmission Owner elects to fund the capital for the Network Upgrades and Transmission Owner's System Protection Facilities, *which election shall only be available upon mutual agreement of Interconnection Customer and Transmission Owner*; otherwise, such facilities, if any, shall be solely funded by Interconnection Customer.[19]

---

[15] *Id.* at ordering para. E.

[16] MISO Commission Proposed Language Informational Report, Docket No. ER14-2464-002 *et al.* (filed Aug. 17, 2015) (MISO Report).

[17] December 29 Order, 153 FERC ¶ 61,352 at PP 29-35, 55-65.

[18] *Id.* P 65.

[19] Filing, Transmittal Letter at 2.

10. MISO states that it further made appropriate revisions where necessary to section 3.2.1 of the *pro forma* FCA and *pro forma* MPFCA.[20] MISO states that it is proposing the revisions effective as of June 24, 2015, as directed in the December 29 Order, but that it will not retroactively amend executed GIAs, FCAs, or MPFCAs to insert this new language for such agreements where the initial funding option was not selected by the transmission owner between June 24, 2015 and the date of the Filing.[21] MISO also states that it filed a clean "married sheet" to include its proposed Tariff changes to the most recent version of Attachment X (to be effective March 30, 2016).[22] In its Amended Filing, MISO states that it submitted an additional "married sheet" to ensure that the proposed changes from its Filing are properly applied to the currently effective version of the Tariff, effective August 1, 2015.[23]

III. Notices and Responsive Pleadings

11. Notice of the Filing was published in the *Federal Register*, 81 Fed. Reg. 1944 (2016), with interventions, protests, or comments due on or before January 29, 2016. Notice of the Amended Filing was published in the *Federal Register*, 81 Fed. Reg. 3127 (2016), with comments due on or before February 2, 2016.

12. Timely motions to intervene were filed by: E.ON Climate & Renewables North America, LLC; EDF Renewable Energy; Hoopeston Wind, LLC; Alliant Energy Corporate Services, Inc.; Entergy Services, Inc., *et al*.;[24] and South Mississippi Electric Power Association. Timely motions to intervene and protests were filed by Ameren

---

[20] *Id.*

[21] *Id.* at 3.

[22] *Id.* MISO states that the Tariff sheets reflecting a March 30, 2016 effective date include Tariff language effective through that date, including language filed in Docket No. ER16-675-000.

[23] Amended Filing, Transmittal Letter at 1. MISO states that the currently effective version of the Tariff contains the *pro forma* GIA, *pro forma* FCA, and *pro forma* MPFCA that MISO will use until the Commission has acted on its filing made in Docket No. ER16-675-000, which was pending at the time of the Amended Filing.

[24] Entergy Services, Inc. states that it filed the intervention on behalf of Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc.

Services Company[25] and the Indicated MISO Transmission Owners.[26] MISO filed an answer to the protests on February 10, 2016.

A. **Protests**

13. The Indicated MISO Transmission Owners and Ameren state that they have requested rehearing of the December 29 Order; accordingly, they argue that the proposed Tariff changes are not just and reasonable and should not be accepted for filing in light of the outstanding rehearing request.[27]

14. Ameren states that, if the Commission does accept the filing, it should require changes to the proposed Tariff language in MISO's *pro forma* MPFCA, which would require the consent of all of the several interconnection customer parties to the MPFCA before the transmission owner may provide initial funding for the network upgrades.[28] Ameren argues that the proposed language would allow one interconnection customer to force a funding choice on another generator, as well as prevent a transmission owner and a single interconnection customer from using the initial funding election when both parties agree.[29] Ameren asks the Commission to direct MISO to make the following changes to the operative phrase each time it appears in the context of common use upgrades and the MPFCA:

> Transmission Owner shall provide Transmission Provider and Interconnection Customers with written notice pursuant to Article 15 that

[25] Ameren Services Company filed the motion on behalf of its transmission-owning public utility affiliates Ameren Illinois Company, Union Electric Company d/b/a Ameren Missouri, and Ameren Transmission Company of Illinois (collectively, Ameren).

[26] For the purposes of this filing, the Indicated MISO Transmission Owners include: International Transmission Company d/b/a ITCTransmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Ameren; Otter Tail Power Company; and Indianapolis Power & Light Company.

[27] Motion to Intervene and Protest of the Indicated MISO Transmission Owners, Docket Nos. ER16-696-000 and ER16-696-001, at 3 (filed Jan. 29, 2016); Motion to Intervene and Protest of Ameren Services Company, Docket Nos. ER16-696-000 and ER16-696-001, at 4 (filed Jan. 29, 2016) (Ameren Protest).

[28] Ameren Protest at 3.

[29] *Id.* at 3-4.

> Transmission Owner elects to fund the capital for the Network Upgrades and Transmission Owner's System Protection Facilities, which election shall only be available upon mutual agreement ~~of all~~ *between each* Interconnection Customer~~s~~ and Transmission Owner; otherwise, such facilities, if any, shall be solely funded by *the applicable* Interconnection Customer~~s~~. *Each Interconnection Customer shall make its own decision whether to accept the Transmission Owner's election to fund the required capital*.[30]

B. MISO Answer

15. MISO states that it believes that it has complied with the Commission's directive and that allowing multiple interconnection customers to select multiple funding mechanisms will complicate the MPFCA and queue process.[31] However, MISO states that it will make the proposed Tariff change requested by Ameren in a subsequent compliance filing if the Commission so directs.

IV. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MISO's answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

17. We reject arguments that the compliance filing should be rejected because of outstanding requests for rehearing of the December 29 Order. Although a request for rehearing may make an order non-final and thus subject to revocation or modification, the

---

[30] *Id.* at 4.

[31] Motion for Leave to Answer and Answer of the Midcontinent Independent System Operator, Inc., Docket Nos. ER16-696-000 and ER16-696-001, at 3 (filed Feb. 10, 2016).

request does not stay the effectiveness or enforceability of the order's provisions;[32] thus, the Commission's directives with respect to the initial funding of network upgrades are final.

18. We accept the filings subject to condition, as discussed below. We find that MISO's proposed Tariff language complies with the Commission's directives in the December 29 Order. However, we agree with Ameren that the Tariff language proposed in MISO's *pro forma* MPFCA could preclude an interconnection customer party from making its own financing decisions with respect to the network upgrade costs without the agreement of all other interconnection customer parties to the agreement. In addition, MISO's filings contain Tariff language that was pending in Docket No. ER16-675-000 at the time it was filed, but that has since been rejected by the Commission without prejudice.[33] Accordingly, we accept the filings, to be effective on June 24, 2015, as requested, subject to MISO submitting a compliance filing due within 30 days from the date of this order that includes the revisions to the *pro forma* MPFCA proposed by Ameren and removes the Tariff language rejected in Docket No. ER16-675-000.

<u>The Commission orders</u>:

(A) MISO's filings are accepted, effective June 24, 2015, subject to condition, as discussed in the body of this order.

(B) MISO is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

---

[32] *See* 18 C.F.R. § 385.713(e) (2015); *Mirant Kendall, LLC and Mirant Americas Energy Marketing, L.P.*, 110 FERC ¶ 61,272, at P 9 (2005) (Commission's reliance on order subject to rehearing proper because order remained effective).

[33] *See Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,247 (2016).